



January 28, 2014

SENATE BILL No. 261

DIGEST OF SB 261 (Updated January 24, 2014 1:07 pm - DI 75)

Citations Affected: IC 5-32.

Synopsis: Construction managers as constructors. Authorizes public agencies to employ construction managers as constructors for certain construction projects.

Effective: July 1, 2014.

Hershman, Banks

January 13, 2014, read first time and referred to Committee on Commerce, Economic Development & Technology.
January 27, 2014, amended, reported favorably — Do Pass.

SB 261—LS 6438/DI 75



January 28, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 261

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-32 IS ADDED TO THE INDIANA CODE AS A
2 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
3 **2014]:**
4 **ARTICLE 32. EMPLOYMENT OF CONSTRUCTION**
5 **MANAGERS AS CONSTRUCTORS FOR PROJECTS**
6 **Chapter 1. General Provisions**
7 **Sec. 1. Except as provided in this article, the applicable public**
8 **works statute applies to the construction projects of the particular**
9 **public agency performed under this article.**
10 **Chapter 2. Definitions**
11 **Sec. 1. The definitions in this chapter apply throughout this**
12 **article.**
13 **Sec. 2. "Applicable public works statute" refers to whichever of**
14 **the following statutes is applicable to public works projects of the**
15 **public agency:**
16 **(1) IC 4-13.6.**

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- 1 **(2) IC 5-16.**
- 2 **(3) IC 36-1-12.**
- 3 **(4) Any other statute applicable to the public works projects**
- 4 **of the public agency.**
- 5 **Sec. 3. "Architect" refers to a person registered under**
- 6 **IC 25-4-1.**
- 7 **Sec. 4. "CMc" or "construction manager as constructor" means**
- 8 **a person that provides CMc services.**
- 9 **Sec. 5. "CMc contract" refers to a contract for CMc services.**
- 10 **Sec. 6. "CMc services" includes the following:**
- 11 **(1) Preconstruction phase services, including advice during**
- 12 **the preconstruction phase of the project as described in the**
- 13 **RFP.**
- 14 **(2) Consultation, collaboration, project construction**
- 15 **management, and other services as described in the RFP,**
- 16 **regarding the construction during and after the design and**
- 17 **construction phases. However, the CMc may not procure the**
- 18 **project professional architectural and engineering design**
- 19 **services. The public agency must directly contract for the**
- 20 **services of the architect and engineer of record.**
- 21 **(3) Development of a construction schedule, estimated cost of**
- 22 **construction, and analysis of qualifications of first tier**
- 23 **subcontractors.**
- 24 **(4) Subject to the CMc contract, a guarantee of:**
- 25 **(A) the cost of the project; and**
- 26 **(B) the project schedule.**
- 27 **Sec. 7. "Engineer" refers to a person registered under**
- 28 **IC 25-31-1.**
- 29 **Sec. 8. "Evaluation committee" refers to a group of individuals**
- 30 **who are responsible for evaluating the responses of offerors to the**
- 31 **RFP.**
- 32 **Sec. 9. "First tier subcontractor" refers to a subcontractor who**
- 33 **contracts directly with the CMc.**
- 34 **Sec. 10. "GMP" refers to the guaranteed maximum price for the**
- 35 **work as may be established in the CMc contract.**
- 36 **Sec. 11. "Offeror" refers to a person who submits a response to**
- 37 **an RFP.**
- 38 **Sec. 12. "Person" refers to a natural person, a partnership, a**
- 39 **limited liability company, or a corporation.**
- 40 **Sec. 13. (a) "Project" means the construction, remodeling,**
- 41 **rehabilitation, or repair of buildings or other facilities owned by a**
- 42 **public agency as described in the RFP.**



1 (b) The term does not include the construction, remodeling,
2 rehabilitation, or repair of roads, highways, bridges, or potable
3 water or wastewater infrastructure.

4 Sec. 14. "Public agency" has the meaning set forth in
5 IC 5-30-1-11.

6 Sec. 15. "Request for proposals" or "RFP" refers to the process
7 by which a public agency solicits persons to provide CMc services
8 under this article.

9 Chapter 3. Request for Proposals

10 Sec. 1. If a public agency chooses to use the procedures set forth
11 in this article when performing a public works project, the public
12 agency shall select a CMc as provided in this chapter.

13 Sec. 2. (a) The public agency shall issue a request for proposals.

14 (b) Notice of a request for proposals shall be given as other
15 notices are required to be given under the applicable public works
16 statute.

17 Sec. 3. A request for proposals must include at least the
18 following:

19 (1) A statement of the criteria, process, and procedures, which
20 must include consideration of qualifications and fees, by
21 which:

22 (A) an offeror will be evaluated;

23 (B) a CMc will be selected; and

24 (C) a CMc contract will be awarded.

25 (2) Information about how the GMP may be established as
26 part of the contract.

27 (3) A description of the insurance requirements for the CMc.

28 Sec. 4. Each offeror selected to meet with the evaluation
29 committee, based on the evaluation committee's review of the RFP
30 responses, must be given an equal opportunity to meet and
31 communicate with the evaluation committee.

32 Sec. 5. A summary of the evaluation committee's evaluation of
33 each offeror is subject to disclosure under IC 5-14-3, but only after
34 the CMc contract has been awarded.

35 Sec. 6. If the public agency determines to proceed with the
36 project, the public agency shall enter into negotiations with the
37 offeror whose proposal has been selected by the evaluation
38 committee considering:

39 (1) the responses to the RFP;

40 (2) any interviews with selected offerors; and

41 (3) evaluation of fees.

42 Chapter 4. CMc Contract



1 **Sec. 1.** After the public agency has selected an offeror to be the
 2 CMc, the public agency and that offeror may negotiate the final
 3 terms and conditions of the contract for CMc services for the
 4 project.

5 **Sec. 2. (a)** Subject to this article, the CMc contract must require
 6 the CMc to provide payment and performance bonds in an amount
 7 not less than the estimated construction costs of the project or the
 8 GMP, as provided by the RFP.

9 **(b)** Construction may not be performed until the CMc has
 10 provided the bonds for that construction as required in the RFP
 11 and IC 5-32-6.

12 **Sec. 3.** A CMc contract must describe the details of any
 13 adjustment of compensation or other incentives negotiated between
 14 the public agency and the CMc.

15 **Sec. 4.** A CMc contract may describe whether the CMc and the
 16 public agency agree to any cost overrun or delay damages or early
 17 completion incentives.

18 **Sec. 5.** Changes in the contract for CMc services may be made
 19 as provided in the CMc contract.

20 **Sec. 6.** A public agency or CMc may terminate the CMc
 21 contract before the GMP has been determined, if the RFP provides
 22 for a GMP.

23 **Sec. 7. (a)** If any of the following occur, the public agency may
 24 proceed as described in subsection (b):

25 (1) The CMc contract is terminated under section 6 of this
 26 chapter.

27 (2) The public agency and the selected offeror are unable to
 28 reach agreement on a CMc contract.

29 (3) The selected offeror does not provide the required bonds
 30 as provided in the RFP or this article.

31 **(b)** If any of the events described in subsection (a)(1), (a)(2), or
 32 (a)(3) occur, the public agency may do any of the following:

33 (1) Negotiate a contract with another offeror.

34 (2) Award contracts and complete the project under any other
 35 applicable public works statute.

36 (3) Terminate the project.

37 **Sec. 8.** A CMc contract may describe if and when the GMP will
 38 be determined. If a GMP is established, the contract must describe
 39 all clarifications and assumptions on which the GMP is based.

40 **Chapter 5. CMc Award of First Tier Subcontracts**

41 **Sec. 1.** Before a first tier subcontract is awarded, the CMc must
 42 invite bids from at least three (3) bidders. The CMc must mail a



1 notice to each bidder at least ten (10) days before the time fixed for
2 receiving bids.

3 **Sec. 2. Each bidder must submit under oath as a part of the bid**
4 **a statement of the following information:**

- 5 (1) The bidder's professional experience.
6 (2) The bidder's proposed plan for performing the work.
7 (3) The equipment and personnel available for the
8 performance of the work.
9 (4) The bidder's current financial status.
10 (5) The bidder's best estimate of the cost of each item of work
11 to be performed, including a breakdown of all labor and
12 materials required to complete the work.

13 **Sec. 3. After bids have been submitted to the CMc, the CMc may**
14 **contract only with the lowest and best bidder, as determined by the**
15 **CMc in consultation with the public agency. For purposes of**
16 **determining the lowest and best bid under this subsection, the**
17 **following, in addition to the bid price, may be considered:**

- 18 (1) Whether the bidder has submitted a bid that conforms in
19 all material respects to the specifications.
20 (2) Whether the bidder has submitted a bid that complies
21 specifically with the invitation to bid and the instructions to
22 bidders.
23 (3) Whether the bidder has complied with all applicable
24 statutes, ordinances, resolutions, or rules pertaining to the
25 award of a public contract.
26 (4) The ability and capacity of the bidder to perform the
27 work.
28 (5) The integrity, character, and reputation of the bidder.
29 (6) The competence and experience of the bidder.
30 (7) Other criteria that the CMc considers appropriate after
31 consultation with the public agency.

32 **Sec. 4. Once the lowest and best bidder is selected, the CMc's**
33 **contract with that bidder must include terms and conditions that**
34 **are designed to accomplish the work at the lowest possible cost to**
35 **the public agency.**

36 **Sec. 5. (a) Except as provided in subsection (b), a bid is a public**
37 **record subject to public inspection under IC 5-14-3.**

38 **(b) A bid is not subject to inspection and copying under**
39 **IC 5-14-3 until a contract has been awarded or the solicitation of**
40 **bids has been canceled.**

41 **Chapter 6. Bonds**

42 **Sec. 1. The CMc shall execute a payment bond to the public**



1 agency, approved by the public agency, in an amount equal to the
2 GMP, if established, or the proposed construction cost. The
3 payment bond must be conditioned for payment by the CMc, the
4 CMc's successors and assigns, and by the first tier subcontractors,
5 their successors and assigns, of all indebtedness that may accrue to
6 any person for any labor or service performed, materials
7 furnished, or service rendered in the project. The bond by its terms
8 must be conditioned to directly inure to the benefit of
9 subcontractors, laborers, suppliers of materials, and those
10 performing service who have furnished or supplied labor, material,
11 or service for the project.

12 Sec. 2. (a) The CMc shall furnish proof of its ability to obtain a
13 valid performance bond that is acceptable to the public agency in
14 an amount equal to the GMP, if established, or the proposed
15 construction cost.

16 (b) The CMc shall furnish the bond at the time of an early
17 release construction package or when the GMP is determined and
18 provided to the public agency.

19 (c) If the bond is acceptable to the public agency, the
20 performance bond may provide for incremental bonding in the
21 form of multiple or chronological bonds that, when taken as a
22 whole, equal the GMP, if established, or the proposed construction
23 cost. The surety on the bond shall not be released for a period of
24 one (1) year after final settlement with the CMc. A change,
25 modification, omission, or addition in and to the terms or
26 conditions of the contract, plans, specifications, drawings, or
27 profile or any irregularity or defect in the contract or in the
28 proceedings preliminary to the letting and awarding of the CMc
29 contract does not in any way affect or operate to release or
30 discharge the surety.



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Economic Development and Technology, to which was referred Senate Bill No. 261, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 17, after "phases." insert "**However, the CMC may not procure the project professional architectural and engineering design services. The public agency must directly contract for the services of the architect and engineer of record.**".

Page 2, line 19, delete "quality analysis." and insert "**analysis of qualifications of first tier subcontractors.**".

Page 2, line 40, delete "a road, highway, or bridge unless" and insert "**roads, highways, bridges, or potable water or wastewater infrastructure.**".

Page 2, delete lines 41 through 42.

Page 3, delete lines 1 through 2.

Page 3, line 9, delete "A" and insert "**If a public agency chooses to use the procedures set forth in this article when performing a public works project, the**".

Page 4, line 6, delete "if" and insert "**as**".

Page 5, between lines 33 and 34, begin a new paragraph and insert:

"Sec. 5. (a) Except as provided in subsection (b), a bid is a public record subject to public inspection under IC 5-14-3.

(b) A bid is not subject to inspection and copying under IC 5-14-3 until a contract has been awarded or the solicitation of bids has been canceled."

and when so amended that said bill do pass.

(Reference is to SB 261 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 7, Nays 0.

